

EXHIBIT S79 TO DECLARATION OF  
STEPHEN G. SCHWARZ IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In the Matter of )  
3M Company ) Docket Number TSCA-HQ-2006-5004  
St. Paul, MN )  
Respondent )  
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)

**CONSENT AGREEMENT AND FINAL ORDER**

Complainant United States Environmental Protection Agency (EPA or Agency) and Respondent 3M Company (3M or Respondent), the parties herein, having consented to the entry of this Consent Agreement and Final Order before the taking of any testimony and without adjudication of any issues of law or fact herein, hereby consent to the terms of this Consent Agreement and attached Final Order.

**I. PRELIMINARY STATEMENT**

1. This civil administrative proceeding for the assessment of penalties pursuant to section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a) is being simultaneously commenced and concluded pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3).
2. Respondent, for purposes of this proceeding, stipulates that EPA has jurisdiction over the subject matter in this Consent Agreement and waives any defenses it might have as

**Exhibit  
2096**

State of Minnesota v. 3M Co.,  
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to jurisdiction and venue, and without admitting or denying that it has violated the law, consents to the terms of this Consent Agreement and Final Order (CAFO).

3. On June 16, 1999, Complainant and Respondent entered into an “Agreement for TSCA Compliance Audit” (Audit Agreement) for Respondent to conduct an internal audit and to review and report on Respondent’s compliance with TSCA at Respondent’s facilities located and identified in Appendix B of the Audit Agreement. (See Attachment A for the Audit Agreement). A new 3M subsidiary, Dyneon L.L.C., was added to the list of sites to be audited on May 4, 2000. Under the Audit Agreement, 3M would self-disclose consistent with the Agency’s revised Final Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19,618 (April 11, 2000) (commonly referred to as the “Audit Policy”). (Audit Agreement ¶ 1.a.).<sup>1</sup> For those self-disclosures that, in EPA’s view, do not meet all applicable conditions of the Audit Policy, the Audit Agreement provides for 3M to pay pre-negotiated penalties. (Audit Agreement ¶ 3.a.).<sup>2</sup> As stated in the Audit Agreement, “3M neither admits nor denies that reporting and mitigation by 3M pursuant to . . . this

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<sup>1</sup> The Audit Agreement was initiated under the original Audit Policy, 60 Fed. Reg. 66,706 (1995); the applicable factors are the same under the original and revised policies.

<sup>2</sup> EPA issued and revised the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties. However, EPA retains its discretion to recover any economic benefit gained as a result of noncompliance. Where the disclosing party establishes that it satisfies all the conditions listed below, EPA will not seek gravity-based penalties for violations of the federal environmental requirements. The Respondent must demonstrate that it meets the following criteria: (1) discovery of the violation(s) through an environmental audit or a compliance management system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure independent of government or third-party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.

Agreement constitute a violation of TSCA, but nonetheless agrees to pay stipulated civil penalties” specified in the Agreement. (Audit Agreement, ¶ 1.e.).

4. Pursuant to the Audit Agreement, Respondent undertook the audit and submitted a final report, dated September 20, 2000, that covered compliance systems and chemical nomenclature auditing. The final report identified disclosures made to EPA either during the course of the audit or previously as specified in Appendix C to the Audit Agreement, with the exclusion of certain TSCA § 8(e) disclosures that were made to EPA on a separate basis under the Audit Agreement as described in paragraph 5 below.
5. On August 21, 2000, prior to the September 20, 2000 final audit report due date under the Audit Agreement, Respondent made TSCA § 8(e) self-disclosures based on compliance auditing. EPA agreed to allow 3M additional time to conduct further TSCA § 8(e) auditing. The auditing was categorized into different phases to organize 3M’s efforts and to facilitate EPA’s review. These TSCA § 8(e) disclosures, as described in paragraphs 6 and 7 below, are included in this CAFO under the terms of the Audit Agreement and are subject to pre-negotiated penalties under the terms of the Audit Agreement.
6. EPA has identified in sections II and III below the specific TSCA disclosures covered by this CAFO for which EPA is seeking economic benefit and pre-negotiated penalties under the terms of the Audit Agreement.
7. With this CAFO, 3M agrees to pay the pre-negotiated penalties as specified in the Audit Agreement for disclosures that, in EPA’s view, do not meet all applicable provisions of

the Audit Policy. These disclosures include, as described in section II below, Section 8(a) disclosures with pre-negotiated penalties of \$10,000 per disclosure and Section 8(e) disclosures with pre-negotiated penalties of \$15,000 per disclosure involving human data and \$6000 per disclosure involving other data. In addition, 3M agrees to pay economic benefit for certain Section 5 disclosures described in Section II below. All other disclosures made by 3M pursuant to the Audit Agreement not described in sections II and III below constitute disclosures without economic benefit and without penalties. EPA has requested, and 3M has agreed, that all such other disclosures will be covered in a Notice of Determination to be issued by EPA to 3M.

## **II. EPA'S ALLEGATIONS OF FACT AND LAW**

8. In connection with certain disclosures made by 3M pursuant to the Audit Agreement, EPA makes allegations of fact and law in section II. Without admitting or denying that it has violated the law, 3M agrees to waive its right to a judicial or administrative hearing or appeal in any proceeding with EPA as a party under TSCA, 15 U.S.C. § 2601, et seq. and the Administrative Procedures Act, 5 U.S.C. § 702 as to any issue of fact or law raised by EPA's allegations of fact and law set forth below. Except as expressly stipulated, acknowledged and agreed herein, 3M neither makes nor has made any admissions of fact or law, acknowledgments, or agreements in connection herewith. Neither this CAFO, nor any discussions leading up to this CAFO, shall be admissible in evidence against 3M or any person, except as and to the extent necessary either in a proceeding to which 3M and EPA are parties to enforce the provisions of the CAFO or as specified in Paragraph 90 of this CAFO.

COUNT 1

9. Paragraphs 1 through 8 are re-alleged and incorporated herein by reference.
10. Respondent is a corporation, which is a “person” as defined in 40 C.F.R. § 720.3(x) and, as such, is subject to TSCA and regulations promulgated thereunder.
11. Respondent owns and operates manufacturing facilities identified in Appendix B of the Audit Agreement.
12. Respondent “manufactures,” which means to import into the customs territory of the United States, produce or manufacture, as defined in TSCA § 3(7), 15 U.S.C. § 2602(7).
13. Any chemical substance which is not included in the chemical substance list (TSCA Inventory) compiled and published under TSCA § 8(b), 15 U.S.C. § 2607(b), is a “new chemical substance” pursuant to TSCA § 3(9), 15 U.S.C. § 2602(9).
14. Pursuant to TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1), except as provided in TSCA § 5(h), no person may manufacture a new chemical substance unless such person submits a Premanufacture Notification (PMN) to EPA at least ninety (90) days before manufacturing that substance.
15. TSCA § 15 (1)(B), 15 U.S.C. § 2614(1)(B), provides that it is unlawful for any person to fail or refuse to comply with any requirement prescribed by TSCA §§ 5 or 6, 15 U.S.C. §§ 2604 o 2605.

16. TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B) provides that it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA, or a rule thereunder for which a penalty maybe assessed pursuant to TSCA § 16(a), 15 U.S.C. § 2615(a).
17. On February 20, 1998, Respondent disclosed to EPA in writing pursuant to the Audit Agreement that it had not submitted a PMN for a chemical substance, identified by Respondent as TS-981903 (Chemical A).
18. On February 20, 1998 and September 20, 2000, Respondent informed EPA in writing that 3M manufactured Chemical A from January 19, 1993 through September 6, 1997, prior to submitting a PMN for this chemical.
19. Chemical A was not on the TSCA Inventory from January 19, 1993 through September 6, 1997.
20. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical A is a failure to comply with TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1), which is a violation of TSCA §§ 15(1)(B) and (3)(B), 15 U.S.C. §§ 2614(1)(B) and (3)(B).

COUNT 2

21. Paragraphs 1 through 16 are re-alleged and incorporated herein by reference.

22. On June 28, 1999, Respondent disclosed to EPA in writing pursuant to the Audit Agreement that it had not submitted a PMN for a chemical substance. 3M subsequently submitted a PMN to the Agency for this chemical substance, which was identified by the Agency as P-99-1002 (Chemical B).
23. On June 28, 1999 and September 20, 2000, Respondent informed EPA in writing that 3M manufactured Chemical B from January 10, 1996 through December 22, 1999, prior to submitting a PMN for this chemical.
24. Chemical B was not on the TSCA Inventory from January 10, 1996 through December 22, 1999.
25. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical B is a failure to comply with TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1), which is a violation of TSCA §§ 15(1)(B) and (3)(B), 15 U.S.C. §§ 2614(1)(B) and (3)(B).

COUNT 3

26. Paragraphs 1 through 16 are re-alleged and incorporated herein by reference.
27. On July 22, 1999, Respondent disclosed to EPA in writing that it had not submitted a PMN for a chemical substance, identified by Respondent as TS-832552 (Chemical C).

28. On July 22, 1999 and September 20, 2000, Respondent informed EPA in writing that 3M manufactured Chemical C from June 18, 1997 through June 21, 1999, prior to submitting a PMN for this chemical.
29. Chemical C was not on the TSCA Inventory from June 18, 1997 to June 21, 1999.
30. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical C is a failure to comply with TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1), which is a violation of TSCA §§ 15(1)(B) and (3)(B), 15 U.S.C. §§ 2614(1)(B) and (3)(B).

COUNT 4

31. Paragraphs 1 through 16 are re-alleged and incorporated herein by reference.
32. On September 29, 1999, Respondent disclosed to EPA in writing pursuant to the Audit Agreement that it had not submitted a PMN for a chemical substance, identified by Respondent with a Chemical Abstract Registry (CAS) Number. Respondent has claimed the chemical CAS number as TSCA Confidential Business Information under TSCA § 14 (Chemical D).
33. On September 29, 1999 and September 20, 2000, Respondent informed EPA in writing that 3M manufactured Chemical D during the time period of January 1, 1995 through June 17, 1999, prior to submitting a PMN for this chemical.

34. Chemical D was not on the TSCA Inventory from January 1, 1995 through June 17, 1999.
35. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical D is a failure to comply with TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1), which is a violation of TSCA §§ 15(1)(B) and (3)(B), 15 U.S.C. §§ 2614(1)(B) and (3)(B).

COUNT 5

36. Paragraphs 1 through 16 are re-alleged and incorporated herein by reference.
37. On April 8, 1999, Respondent disclosed to EPA in writing pursuant to the Audit Agreement that it had not submitted a PMN for a chemical substance, identified by Respondent as TS-204926 (Chemical E).
38. On April 8, 1999 and September 20, 2000, Respondent informed EPA in writing that 3M manufactured Chemical E from June 1, 1996 through November 23, 1999, prior to submitting a PMN for this chemical.
39. Chemical E was not on the TSCA Inventory from June 1, 1996 to November 23, 1999.
40. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical E is a failure to comply with TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1), which is a violation of TSCA §§ 15(1)(B) and (3)(B), 15 U.S.C. §§ 2614(1)(B) and (3)(B).

COUNT 6

41. Paragraph 1 through 16 are re-alleged and incorporated herein by reference.
42. On September 21, 1999, Respondent disclosed to EPA in writing pursuant to the Audit Agreement that it had not submitted a PMN for a chemical substance, identified by Respondent as TS-439521 (Chemical F).
43. On September 21, 1999 and September 20, 2000, Respondent informed EPA in writing that 3M manufactured Chemical F from March 1, 1996 through August 1, 1999, prior to submitting a PMN for this chemical.
44. Chemical F was not on the TSCA Inventory from March 1, 1996 through August 1, 1999.
45. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical F is a failure to comply with TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1), which is a violation of TSCA §§ 15(1)(B) and (3)(B), 15 U.S.C. §§ 2614(1)(B) and (3)(B).

COUNT 7

46. Paragraphs 1 through 16 are re-alleged and incorporated herein by reference.
47. On November 4, 1999, Respondent disclosed to EPA in writing that it had not submitted a PMN for a chemical substance, identified by Respondent with a CAS Number.

Respondent has claimed the chemical CAS number as TSCA Confidential Business Information under TSCA § 14 (Chemical G).

48. On November 4, 1999 and September 20, 2000, Respondent informed EPA in writing that 3M manufactured Chemical G during the time period of July 20, 1997 through April 30, 1999, prior to submitting a PMN for this chemical.
49. Chemical G was not on the TSCA Inventory from July 20, 1997 through April 30, 1999.
50. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical G is a failure to comply with TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1), which is a violation of TSCA §§ 15(1)(B) and (3)(B), 15 U.S.C. §§ 2614(1)(B) and (3)(B).

COUNT 8

51. Paragraphs 1 through 16 are re-alleged and incorporated herein by reference.
52. On May 12, 2000, Respondent disclosed to EPA in writing pursuant to the Audit Agreement that it had not submitted a PMN for a chemical substance, identified by Respondent as TS-926435 (Chemical H).
53. On May 12, 2000 and September 20, 2000, Respondent informed EPA in writing that 3M manufactured Chemical H during the time period of May 6, 1996 through September 21, 2000, prior to submitting a PMN for this chemical.

54. Chemical H was not on the TSCA Inventory from May 6, 1996 through September 21, 2000.
55. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical H is a failure to comply with TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1), which is a violation of TSCA §§ 15(1)(B) and (3)(B), 15 U.S.C. §§ 2614(1)(B) and (3)(B).

COUNTS 9-10

56. Paragraphs 1 through 16 are re-alleged and incorporated herein by reference.
57. 40 C.F.R. § 720.102 was promulgated under authority of TSCA § 8(a).
58. 40 C.F.R. § 720.102 requires any person who manufactures or imports a new chemical substance to report to EPA information on such manufacture or import no later than 30 calendar days after the date of first manufacture or import.
59. On or about July 22, 1999 and September 20, 2000, Respondent disclosed to EPA in writing pursuant to the Audit Agreement it had not submitted two Notices of Commencement of Manufacture or Import (NOC) for chemical substances no later than 30 calendar days after the date that it first manufactured or imported the chemicals for non-exempt commercial purposes.
60. Respondent's correspondence with EPA details the following: On or about July 22, 1999, Respondent submitted to the Agency a NOC for a chemical substance identified

generically as *Caprolactone dipentaerythritol polyurethane*, hereinafter known as Chemical I. The NOC indicated that Chemical I had first been manufactured for non-exempt commercial purposes on August 25, 1995.

61. Additionally, on or about July 22, 1999, Respondent also submitted a NOC for a chemical substance subsequently identified by EPA as P-92-1246, hereinafter known as Chemical J. This NOC dictated that Chemical J had first been manufactured for non-exempt commercial purposes on February 5, 1993.
62. EPA alleges that Respondent failed to submit NOCs for Chemicals I and J no later than 30 calendar days after the date of first manufacture or import as required by 40 C.F.R. § 720.102.
63. EPA alleges that Respondent's failure to timely submit NOCs for Chemical I and J is a failure to comply with 40 C.F.R. § 720.102, a rule promulgated under TSCA § 8(a), 15 U.S.C. § 2607(a), which constitutes two violations of TSCA § 15(3)(B), 15 U.S.C. § 2615(a).

COUNTS 11 - 41

64. Paragraphs 1 through 12, and 16, are re-alleged and incorporated herein by reference.
65. The Respondent manufactures, processes, or distributes in commerce chemical substances or mixtures, as those terms are defined in TSCA § 3, 15 U.S.C. § 2602 and TSCA § 8(f), 15 U.S.C. § 2607(f).

66. TSCA § 8(e), 15 U.S.C. § 2607(e), provides that “Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.” EPA has published guidance interpreting this statutory provision, including Statement of Interpretation and Policy, 43 Fed. Reg. 11,110 (Mar. 16, 1978); TSCA Section 8(e); Notification of Substantial Risk; Policy Clarification and Reporting Guidance, 68 Fed. Reg. 33129 (June 3, 2003); and Comment and Response Document for Revised Policy Statement of Section 8(e) of TSCA, OPPT-2002-0067-0002 (Feb. 20, 2003).
67. The Respondent is subject to the requirements of TSCA § 8(e), 15 U.S.C. § 2607(e).
68. In late March and early April 2000, EPA requested that 3M voluntarily submit copies of studies and other information relating to fluorochemicals (FCs) not previously submitted to EPA and not otherwise available through publications. This request stemmed from an earlier dialogue between OPPT and 3M regarding FCs and a series of TSCA § 8(e) submissions by 3M beginning in May of 1998, which reported the measurement of several FCs in general population serum and in wildlife at low parts per billion (ppb) levels. 3M had previously reported to the TSCA § 8(e) docket the detection of FCs in the serum of its production workers at low parts per million (ppm) levels.
69. On or about April 21, 2000 and subsequently in May of 2000, 3M responded to EPA’s information request by providing over 600 studies to EPA’s “For Your Information”

(FYI) docket number 1378. 3M then audited these studies to determine TSCA § 8(e) relevancy based on EPA's guidance described in Paragraph 66 above and currently available information. This auditing constituted 3M's Phase I TSCA § 8(e) auditing, see Paragraph 5 above.

70. In a letter to EPA's Office of Pollution Prevention and Toxics (OPPT) dated August 21, 2000, Respondent requested that EPA redesignate, to the TSCA § 8(e) docket, 31 studies and information which 3M previously had submitted to EPA and were contained in "For Your Information" (FYI) docket number 1378. These studies and information supplement 3M's previous § 8(e) submissions in Docket Numbers 8EHQ-1180-373 and 8EHQ-1180-374.
  
71. As described in Paragraphs 2, 8, 66 and 68 of this Consent Agreement, by placing the 31 studies and information in the 8(e) docket as a result of its Phase I § 8(e) auditing, 3M does not admit, acknowledge or agree that these items require reporting under TSCA § 8(e) or constitute violations of TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B). EPA has not conducted its own independent compliance review of the 31 studies and information, and hence, EPA has made no substantive determination regarding these items. For the purpose of assessing pre-negotiated penalties under this Consent Agreement in accordance with both the Audit Agreement and the Agency's Audit Policy described in Paragraph 3 of this Consent Agreement, EPA treats the 31 studies and information placed by 3M in the 8(e) docket as a result of its Phase I § 8(e) auditing as 31 violations of TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B).

COUNTS 42-44

72. Paragraphs 1 through 12, 16, and 65 through 68, are re-alleged and incorporated herein by reference.
73. From May 2000 through December 2000, 3M continued to respond to EPA's request for information in Paragraph 68, by providing an additional 700 studies to EPA's FYI Docket Number 1378. 3M then audited these studies to determine TSCA 8(e) relevancy based on EPA's guidance described in Paragraph 66 above and currently available information. This auditing constituted 3M's Phase II TSCA § 8(e) auditing, see Paragraph 5 above.
74. In a letter to OPPT dated June 13, 2001, Respondent requested that EPA redesignate, to the TSCA § 8(e) docket, three studies which 3M previously had submitted to EPA and were contained in "For Your Information" (FYI) Docket Number 1378 (also known as AR-226). These studies and information supplement 3M's previous 8(e) submissions in Docket Numbers 8EHQ-118C-373 and 8EHQ-1180-374.
75. As described in Paragraphs 2, 8, 66 and 68 of this Consent Agreement, by placing the three studies and information in the 8(e) docket as a result of its Phase II § 8(e) auditing, 3M does not admit, acknowledge or agree that these items require reporting under TSCA § 8(e) or constitute violations of TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B). EPA has not conducted its own independent compliance review of the three studies and information, and hence, EPA has made no substantive determination regarding these items. For the purpose of assessing pre-negotiated penalties under this Consent

Agreement in accordance with both the Audit Agreement and the Agency's Audit Policy described in Paragraph 3 of this Consent Agreement, EPA treats the three studies and information placed by 3M in the 8(e) docket as a result of its Phase II § 8(e) auditing as three violations of TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B).

COUNTS 45 - 70

76. Paragraphs 1 through 12, 16, and 65 through 68, are re-alleged and incorporated herein by reference.
77. In a letter to OPPT dated May 23, 2003, 3M disclosed to the Agency, and submitted to the TSCA § 8(e) docket, 26 studies as a result of auditing to determine TSCA 8(e) relevancy based on EPA's guidance described in Paragraph 66 above and currently available information. This auditing constituted 3M's Phase III TSCA § 8(e) auditing, see Paragraph 5 above, which focused on studies performed after the January 1, 1992 cut-off date for 3M's voluntary participation in the Agency's TSCA § 8(e) Compliance Audit program (CAP).<sup>3</sup>
78. As described in Paragraphs 2, 8, 66 and 68 of this Consent Agreement, by placing the 26 studies and information in the 8(e) docket as a result of its Phase III § 8(e) auditing, 3M does not admit, acknowledge or agree that these items require reporting under TSCA § 8(e) or constitute violations of TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B). EPA has not

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<sup>3</sup> In 1991, the Agency announced a one-time voluntary TSCA § 8(e) CAP. The CAP was designed to primarily to obtain information that was required to be submitted to EPA before the CAP, and encourage companies to voluntarily search their files for data reportable under § 8(e). The CAP established stipulated penalties and a ceiling on penalties that would be collected from any single company. EPA announced final settlements with CAP participants in 1996 and collected stipulated penalties.

conducted its own independent compliance review of the 26 studies and information, and hence, EPA has made no substantive determination regarding these items. For the purpose of assessing pre-negotiated penalties under this Consent Agreement in accordance with both the Audit Agreement and the Agency's Audit Policy described in Paragraph 3 of this Consent Agreement, EPA treats the 26 studies and information placed by 3M in the 8(e) docket as a result of its Phase III § 8(e) auditing as 26 violations of TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B).

COUNTS 71 - 244

79. Paragraphs 1 through 12, 16, and 65 through 68, are re-alleged and incorporated herein by reference.
  
80. In letters to OPPT dated September 24, 2003 ("2004"), October 26, 2004 and November 16, 2005, 3M disclosed to the Agency, and submitted to the TSCA § 8(e) docket, 174 studies as a result of auditing to determine TSCA 8(e) relevancy based on EPA's guidance described in Paragraph 66 above and currently available information. This auditing constituted 3M's Phase IV TSCA § 8(e) auditing, see Paragraph 5 above, which focused on two additional categories of studies not encompassed by Phases I, II, and III: (1) the remaining post-January 1, 1992 studies for significant endpoints that had not been covered by the Phase III subchronic and chronic study categories; and (2) studies on mixture formulations that reached pilot or full scale production or that otherwise were commercialized by 3M.

81. As described in Paragraphs 2, 8, 66 and 68 of this Consent Agreement, by placing the 174 studies and information in the 8(e) docket as a result of its Phase IV § 8(e) auditing, 3M does not admit, acknowledge or agree that these items require reporting under TSCA § 8(e) or constitute violations of TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B). EPA has not conducted its own independent compliance review of the 174 studies and information, and hence, EPA has made no substantive determination regarding these items. For the purpose of assessing pre-negotiated penalties under this Consent Agreement in accordance with both the Audit Agreement and the Agency's Audit Policy described in Paragraph 3 of this Consent Agreement, EPA treats the 174 studies and information placed by 3M in the 8(e) docket as a result of its Phase IV § 8(e) auditing as 174 violations of TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B).

### **III. CIVIL PENALTY/ECONOMIC BENEFIT**

82. Respondent submitted its self-disclosures pursuant to the Audit Agreement and the applicable provisions of the Audit Policy.
83. EPA's review of Respondent's correspondence as identified in Counts 1 through 8 above indicates that Respondent has met the terms of the Audit Agreement and the applicable provisions of the Audit Policy as stated in Paragraph 4.
84. EPA uses the "BEN" model<sup>4</sup> to determine the economic benefit gained by an entity's noncompliance. EPA applied the BEN model to Respondent's violations and determined that Respondent's economic benefit from the delayed and avoided

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<sup>4</sup> The BEN model is a computer program used to calculate the economic benefit of noncompliance. BEN is located on the internet at <http://es.epa.gov/oeca/models/ben.html>.

expenditures of filing PMNs for Chemicals A through H was Fifty-Two Thousand Nine Hundred and Eighty-Three dollars (\$52,983) and divided by count as follows:

Count 1 (Chemical A) - \$ 4,645  
Count 2 (Chemical B) - \$ 5,781  
Count 3 (Chemical C) - \$ 4,788  
Count 4 (Chemical D) - \$15,850  
Count 5 (Chemical E) - \$ 3,353  
Count 6 (Chemical F) - \$ 1,167  
Count 7 (Chemical G) - \$13,430  
Count 8 (Chemical H) - \$ 3,969

85. Pursuant to the terms of the Audit Agreement entered into between EPA and Respondent, Respondent has agreed to pay the following pre-negotiated penalties for all of the other disclosures set forth in Counts 9–244 above that in EPA's view failed to meet the applicable conditions of the Audit Policy. Pre-negotiated penalties for these disclosures are calculated as follows:

TSCA 8(a) reports, Notices of Commencement ( $2 \times \$10,000$ ) - \$ 20,000  
TSCA 8(e) studies/reports involving human data ( $5 \times \$15,000$ ) - \$ 75,000  
TSCA 8(e) studies/reports involving other data ( $229 \times \$6,000$ ) - \$1,374,000

86. The total sum of penalties to be paid (Paragraphs 84 and 85) by Respondent is \$1,521,983.

#### **IV. TERMS OF SETTLEMENT**

87. These terms of settlement resolve only the civil and administrative claims alleged in this CAFO.
88. The effect of settlement described in Paragraph 87 above is conditional upon the accuracy of the Respondent's representations to EPA in the Audit Agreement and Respondent's letters and reports submitted to EPA pursuant to that Agreement dated

February 20, 1998; June 28, 1999; July 22, 1999; April 8, 1999; September 21, 1999; September 29, 1999; November 4, 1999; May 12, 2000; August 21, 2000; June 13, 2001; September 20, 2000; May 23, 2003, September 24, 2004; October 26, 2004; and November 16, 2005.

89. Respondent waives its right pursuant to TSCA § 16(a)(2)(A), 15 U.S.C. § 2615(a)(2)(A), and 40 C.F.R. § 22.18(b)(2) to request an administrative hearing or seek judicial review of the proposed final order accompanying this Consent Agreement.
90. For the sole purpose of establishing Respondent's compliance history in any future enforcement proceeding that EPA may bring against Respondent within five years of the date of the execution of the Final Order, Respondent accepts the violations alleged in Counts 1-10 of this Consent Agreement. For all other purposes, Respondent neither admits nor denies the allegations, but consents to the terms and conditions of this Consent Agreement and Final Order.
91. Through the execution of this Consent Agreement, Respondent certifies that with respect to the violations alleged herein, Respondent is in full compliance with TSCA §§ 5, 8(a), 8(e) and 15.
92. Respondent agrees to pay a civil penalty in the sum of **\$1,521,983**.

- a. Not more than sixty (60) calendar days after the effective date of the Final Order, Respondent shall either submit a cashier's or certified check with a notation of "3M Company, Civil Penalty Docket No. TSCA-HQ-2006-5004," payable to the order of the "Treasurer, United States of America," in the amount of **\$1,521,983** to:

EPA-Washington  
(Hearing Clerk)  
Docket No. TSCA-HQ-2006-5004  
P.O. Box 360277  
Pittsburgh, PA 15251-6277

or pay **\$1,521,983** by wire transfer with a notation of "3M Company, Civil Penalty Docket No. TSCA-HQ-2006-5004" by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for deposit:	68010099
The Bank Holding Acct:	Treas_NYC
The ABA routing Number:	021030004

- b. Respondent shall forward a copy of the check or documentation of a wire transfer to:

Tony R. Ellis, Case Development Officer  
U.S. Environmental Protection Agency (2245A)  
Toxics and Pesticides Enforcement Division  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460  
(202) 564-4167  
Fax (202) 564-0035

c. If Respondent fails to make the payment in a timely manner, as described in Paragraph 92, Respondent shall pay a stipulated penalty of **One Thousand Dollars (\$1,000)** per calendar day for every day the penalty payment is late, unless EPA in writing excuses or mitigates the stipulated penalty. EPA may excuse or mitigate the stipulated penalty if EPA determines that the failure to comply occurred despite the exercise of good faith and due diligence by the Respondent.

**V. OTHER MATTERS**

93. This Consent Agreement shall be binding upon the parties, and their respective officers, directors, employees, successors and assigns. The undersigned representative of each party certifies that he or she is duly authorized by his or her party to enter into this binding Consent Agreement.
94. This Consent Agreement shall take full effect upon the signing of the Final Order by EPA's Environmental Appeals Board or its designated representative.
95. Respondent's obligations under this Consent Agreement shall end when it has made the scheduled payment, paid any pre-negotiated penalties and submitted the copy of the check as required in Paragraph 92 of this Consent Agreement.
96. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. In the event that this Consent Agreement (or one or more of its terms and conditions) is held invalid, or is not executed by all of the

signatory parties in identical form, or is not approved in such identical form by EPA's Environmental Appeals Board or its designated representative, then the entire Consent Agreement shall be null and void.

97. The penalty specified above represents civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.
98. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus pre-negotiated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.
99. The parties agree to bear their own costs.
100. Nothing in this Consent Agreement and Final Order is intended to, nor shall be construed to operate in any way, to resolve any criminal liability of the Respondent.

WE AGREE TO HIS:

For Complainant:

Stephanie Brown

Stephanie P. Brown, Acting Director  
Toxics and Pesticides  
Enforcement Division  
Office of Civil Enforcement  
United States Environmental  
Protection Agency

March 9, 2006

Date

Dean B. Ziegel

Dean B. Ziegel, Attorney for EPA  
Toxics and Pesticides  
Enforcement Division  
Office of Civil Enforcement  
United States Environmental  
Protection Agency

8 March 2006

Date

For Respondent:

Katherine E. Reed

Dr. Katherine E. Reed, PhD  
Staff Vice President, Environmental  
Technology and Safety Services  
3M Company

24 February 2006

Date

Julia A. Hatcher

Julia A. Hatcher, Esq.  
Latham & Watkins  
Counsel for 3M Company

7 March, 2006

Date

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In the Matter of: )  
                            )  
                            )  
3M Company             )       Docket Number TSCA-HQ-2006-5004  
                            )  
                            )  
Respondent.            )       )  
                            )  
                            )  

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**FINAL ORDER**

The United States Environmental Protection Agency as Complainant, and 3M Company as Respondent, the parties herein, having signed and consented to entry of the attached Consent Agreement incorporated by reference into this Final Order,

NOW, THEREFORE, IT IS ORDERED THAT:

1.     Respondent 3M Company (3M) shall comply with all terms of the Consent Agreement;
2.     Respondent is assessed a civil penalty of \$1,521,983; and
3.     Respondent shall, in accordance with the payment provisions set forth in the Consent Agreement, forward a certified or cashier's check, payable to the order of the "Treasurer of the United States of America," to:

EPA-Washington  
(Hearing Clerk)  
Docket No. TSCA-HQ-2006-5004  
P.O. Box 360277  
Pittsburgh, PA 15251-6277

or make payment through a wire transfer as described in the Consent Agreement.

IT IS SO ORDERED.

By: \_\_\_\_\_  
Environmental Appeals Board

Dated: \_\_\_\_\_

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order," 3M Company, Docket No. TSCA-HQ-2006-5004, was filed and copies of the same were mailed to the parties as indicated below:

(Interoffice)	Mr. Dean B. Ziegel, Esquire Toxics and Pesticides Enforcement Division Office of Civil Enforcement U.S. Environmental Protection Agency 1200 Pennsylvania Ave., NW (Mail Code 2245A) Washington, DC 20460 202-564-4038 Fax-202-564-0020
(U.S. Mail)	Mr. Thomas DiPasquale, Esquire Counsel for 3M Company 3M Center St. Paul, MN 55144-1000
	Ms. Julia Hatcher, Esquire Latham & Watkins, Suite 1000 555 Eleventh St., NW Washington, DC 20004-1304

Dated: \_\_\_\_\_

\_\_\_\_\_  
Annette Duncan  
Secretary